

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

Steve Sviggum, Commissioner,
Department of Labor and Industry,
State of Minnesota,

**DECISION AND ORDER GRANTING
MOTION FOR DEFAULT JUDGMENT**

Complainant,

vs.

Craig Englund Construction, Inc.,

Respondent.

This matter came on before Administrative Law Judge (ALJ) Kathleen D. Sheehy on Complainant's Notice of Motion and Motion for Default Judgment, dated November 29, 2007. On December 4, 2007, the ALJ notified the Respondent that if the Respondent wished to contest the motion, a written response must be filed with the ALJ and served on the Department within ten working days after receipt of the motion. Respondent did not file or serve any written response to the motion.

Rory H. Foley, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared for the Department of Labor and Industry (Department). No one appeared for Respondent Craig Englund Construction, Inc., 1306 Skywood Lane, Fridley, MN 55421, nor did Respondent contact the Administrative Law Judge to request an extension of time to respond.

Based on all the files, records, and proceedings, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the contested citation and notification of penalty against Respondent are affirmed, and default judgment in favor of the Department is granted.

Dated: February 19, 2008

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 182.661, subd. 3, this Order is the final decision in this case. Under Minn. Stat. §§ 182.661, subd. 3, and 182.664, subd. 5, the employer, employee or their authorized representatives, or any party, may appeal this Order to the Minnesota Occupational Safety and Health Review Board within 30 days following service by mail of this Decision and Order.

MEMORANDUM

Respondent is an employer engaged in the business of construction. In January 2007, the Respondent's business was located at 17417 – 17264 72nd Place North, Maple Grove, Minnesota. On January 24, 2007, the Department conducted an occupational safety and health inspection of Respondent's place of employment in accordance with Minn. Stat. § 182.659 (2006).¹ As a result of the inspection, the Department found that Respondent had failed to comply with certain OSHA standards, as required by Minn. Stat. § 182.653, subd. 3 (2006). On April 20, 2007, the Commissioner issued Citations and Notifications of Penalty against Respondent for violations of state and federal OSHA regulations found during the inspection. The citation informed Respondent of its right to a hearing to contest the violations in the citation by filing a Notice of Contest with the Commissioner within 20 calendar days of receiving the citation.

On July 18, 2007, the Respondent filed a Notice of Contest challenging the citation and penalties for Citation 1, Items 1a – 1b.² These items concern Respondent's alleged failure to use an appropriate fall protection system. Both violations were deemed serious, and the Department proposed a penalty in the amount of \$450.³

On October 16, 2007, the Department served a Summons and Complaint on the Respondent by mail.⁴ The Summons informed Respondent that he was required to serve an Answer to the Complaint on the Commissioner within 20 days after service of the Summons. Respondent was further informed that his failure to file an Answer might constitute a waiver of Respondent's right to further participation in this proceeding. Respondent did not file an Answer to the Complaint.

The Department's motion for default judgment is based on Minn. R. 5210.0570, subps. 4 and 5 (2007). Subpart 4 provides:

Within 20 days after service of the complaint, the party . . .
against whom the complaint was issued shall file with the
commissioner an answer and serve the answer on every other party.

¹ Affidavit of Rory H. Foley, Ex. B (Complaint).

² The Commissioner treated the Notice of Contest as timely filed.

³ Foley Aff. Ex. A (Citation and Notification of Penalty).

⁴ *Id.*, Ex. C.

The answer must contain a short and plain statement denying those allegations in the complaint that the party intends to contest and assert any and all affirmative defenses. Any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.

If the respondent fails to file a timely answer, subpart 5 permits the ALJ, upon motion by a party, to enter an order affirming the contested citation and notification of penalty. The Department argues that Respondent's failure to file an answer to the complaint is grounds for default judgment under Minn. R. 5210.0570, subp. 5.

Respondent has not filed an answer, timely or untimely, to the Complaint. Because the Respondent did not file an Answer, the allegations contained in the Complaint are deemed admitted, and any affirmative defenses are deemed waived pursuant to Minn. R. 5210.0570, subp. 4 (2007).

Accordingly, Respondent violated 29 C.F.R. § 1926.501(b)(1), as described in Citation 1, Item 1a; and 29 C.F.R. § 1926.501(b)(13), as described in Citation 1, Item 1b. Both of these violations were properly classified as serious violations under Minn. Stat. § 182.651, subd. 12 (2006). The proposed penalty was issued properly pursuant to Minn. Stat. § 182.661, subd. 1 (2006), and the amount of the penalty is appropriate and reflects consideration of the employer's size, the employer's good faith, the employer's violation history, and the gravity of the violation alleged, as required by Minn. Stat. § 182.666, subd. 6 (2006). The contested citation and notification of penalty are affirmed.

K.D.S.